

Right of Way



MaineDOT

Integrity - Competence - Service

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Right of Way

Early in the design stage of a project, a municipality or other local agency must determine whether it will need to purchase real estate or obtain easements. If right-of-way will need to be obtained from private property owners, the agency overseeing a project must be careful to protect each owner's right to be compensated fairly for any property acquired for a public need. This section explains the right-of-way process and includes the following:

- A summary with key steps (pages 5-1 to 5-10);
- Table 5-1: Roles and responsibilities (page 5-5);
- Appendix 5A: Right-of-way process checklist (page 5-11);
- Appendix 5B: Sample letters and forms (page 5-14); and
- Appendix 5C: MaineDOT Right of Way Manual guidance (page 5-21).



➡ Federal guidance is found online: www.fhwa.dot.gov/realestate/lpaguide/index.htm

In general, the scenarios for right-of-way acquisition will include:

- **Fee interest**, in which the State, a municipality or other public agency acquires all interest in a parcel that is necessary for construction and maintenance of a project;
- **Permanent easement**, in which an owner retains title, but an agency obtains the right to use all or a portion of a parcel for a set purpose, such as drainage or placement of a slope;
- **Temporary easement**, in which an agency acquires the right to use all or a portion of a parcel during construction of a project for purposes such as grading, loaming and seeding. Such temporary rights typically expire at the end of a project.

Before moving ahead, understand that you may begin negotiating right-of-way acquisition for a federally funded project – *including in cases of easements and donations* – only after:

- ☐ The National Environmental Policy Act (NEPA) process is **completed**; and
- ☐ The U.S. Department of Transportation has issued the required environmental clearance for a project – typically a “Categorical Exclusion” (CE); and
- ☐ A federally required valuation and determination of just compensation is prepared.

CAUTION! If a project has federal money, the NEPA process must be completed before you offer to acquire property rights. Otherwise, you risk losing **ALL** the money for your project.

5.1 Protections for Property Owners

Private land ownership is protected by the constitutions of the State of Maine and the United States. Any taking of private property for public benefit must be based on necessity and payment of what is known as “just compensation.” Public agencies must afford property owners due process of law.

The primary safeguard is a landmark federal law known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which applies when there is federal money in any phase of a project – even if right-of-way is acquired with private funds. The “Uniform Act” works to ensure that people affected by property acquisition for public projects are treated fairly and not disproportionately harmed. In Maine, state laws are modeled after the Uniform Act.

➡ ***Violating the law on a federally funded project will jeopardize all of the money for the project.***

Legal Requirements: For guidance, refer to regulations in 23 CFR 710 and 49 CFR 24, as well as the MaineDOT Right-of-Way Manual: <http://www.maine.gov/mdot/rowmanual/>

Here are the basic protections for property owners:

- ☐ Owners are entitled to just compensation of at least the acquiring agency's approved appraisal of fair market value.
- ☐ Owners are entitled to written notice of an agency's intent to acquire some of their property and of their basic rights. (*Refer to page 5-17 for an example.*)
- ☐ Agencies should encourage acquisition by agreement and should negotiate in good faith; using **coercion is illegal**.
- ☐ The acquiring agency must provide a written offer and give the property owner reasonable opportunity to consider the offer. MaineDOT uses a 28-day period for its projects.
- ☐ Owners must have the opportunity to accompany the appraiser when a property is inspected for an appraisal.
- ☐ The acquiring agency must pay the agreed upon purchase price before the owner is required to surrender possession of the property.
- ☐ Property owners must receive written notice that they have not less than 90 days to move when relocation is required. This includes any personal property that must be moved.



5.2 Property Donations

Occasionally, landowners will elect to donate property for a project and release a city, town or other agency from its obligation to pay just compensation. In such cases, donations may be accepted without required appraisals, as long as these steps are followed:

- ☐ The federal NEPA process is completed **before** any offer is made to acquire property; and
- ☐ The acquiring agency informs owners in writing of their right to have an independent appraisal performed and be offered fair market value; and
- ☐ Owners sign a document acknowledging that they understand their rights and are releasing the acquiring agency from its obligation to provide an appraisal and just compensation.

5.3 Identifying Right-of-Way Limits

As projects are developed, the agencies managing them must determine where the public way ends and private property begins. Survey data, property records on file with a county, and municipal “road books” are potential starting points for information. MaineDOT discourages use of tax maps as a primary source. If a project is planned for a state road, MaineDOT may have documentation of the right-of-way limits along that corridor; contact the MaineDOT Property Office at 624-3460.

This initial right-of-way research should answer two questions:

- What are the limits and width of the public rights or right of way?
- Are the public’s rights based upon fee ownership, an easement for highway purposes, or what are known as “prescriptive rights” based upon long-term use?

5.4 Field Investigations

After initial research, field work must be done to locate property pins, monuments, fences and other markers indicating property line locations. Property owners should be contacted early in the design process to hear about the anticipated impacts and to verify locations of property markers and other details such as water/sewer systems. Responsibility for contacting owners should be determined at the project kickoff. MaineDOT uses a standard form known as a “property owner report” that seeks basic information about parcels likely to be affected by a planned transportation project.

➡ A sample property owner form is found on page 5-19 and online:

www.maine.gov/mdot/lpa/docs/lpadocs/PropertyOwnerReport.doc

5.5 Determining of Right-of-Way Needs

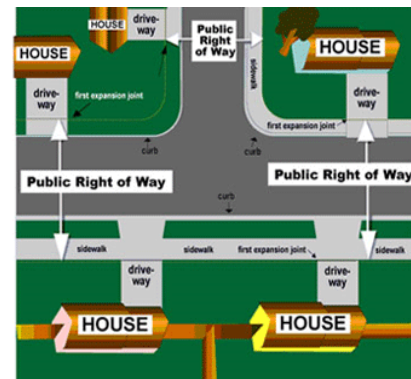
After confirming the limits of the public right-of-way, an agency must consider what additional land or rights in land may be needed. Even where it seems that the work can be done within the existing right-of-way, an agency may need to acquire temporary rights to give a contractor access to some of the abutting parcels during the construction work.

Permanent rights include the following:

- Fee Simple Absolute, in which the State or other public agency acquires interest in all or a portion of a parcel, as necessitated by the project; and
- Easement, in which the owner retains title, but an agency obtains the right to use all or part of a parcel for a specific purpose, such as for drainage or the placement of a slope.

Temporary rights typically consist of the following:

- The right to clear and grub trees;
- The right to have construction equipment operated on private property;
- The right to grade and blend driveways and lawns to match side slopes.



5.6 MaineDOT Responsibilities

Once the right-of-way needs for a project are determined, MaineDOT will acquire those rights if the State of Maine will hold title to them. With few exceptions, the State will hold all permanent rights acquired for projects along state roads or on other state-owned assets.

In such cases, the senior property officer in the MaineDOT Multimodal Program will serve as lead agent on the right-of-way process, with assistance from other staff in MaineDOT's Property Office. **MaineDOT** usually will be the lead agency on the following, as shown in Table 5-1:

- Title examinations (abstracts);
- Property appraisals;
- Appraisal reviews;
- Negotiations with property owners;
- Acquisition/condemnation of the rights;
- Certification that all necessary rights have been acquired for the project.

Right-of-way work done by MaineDOT staff is paid for out of the budget for a locally administered federal-aid project. That is why it is important to identify potential right-of-way needs early – ideally at **kickoff**. Typically, federal money will cover 80 percent of this cost, leaving a municipality or other local agency to come up with the remaining 20 percent.

5.7 Local Responsibilities

If a project is planned for a local street or other location off of the state transportation system, the **municipality** or other local agency in charge of the project will carry out the right-of-way process. If the rights for a project will be acquired and held locally, the agency in charge will be responsible for preparing right-of-way plans; conducting title examinations; developing property appraisals and performing appraisal reviews; negotiating with property owners; and acquiring the rights.

For further guidance on local right-of-way responsibilities, see Appendix 5C, page 5-21.

MaineDOT may assist a municipality or other agency in identifying the scope, schedule and cost of right-of-way work through one of its senior property officers. Additionally, MaineDOT may provide referrals of qualified consultants to assist with right-of-way functions, including appraisal, negotiations, legal services, and title work.

Upon conclusion of a locally administered right-of-way process, the agency overseeing a project must provide MaineDOT with a certification that it has obtained the necessary rights to construct the project as designed, in accordance with all applicable federal and state requirements. This certification must be submitted with the final Plans, Specifications & Estimate (PS&E) package. Refer to standard Communication 14, on page 5-15, for format and typical language.

TABLE 5.1 – STATE & LOCAL RESPONSIBILITIES

TASK	RESPONSIBILITY
<input type="checkbox"/> Verification of Existing Right of Way	State Road: Municipality in consultation with MaineDOT
	Off System: Municipality
<input type="checkbox"/> Field Survey	State Road: Municipality / Consultant
	Off System: Municipality
<input type="checkbox"/> Property Owner Reports	State Road: MaineDOT or Municipality with permission.
	Off System: Municipality
<input type="checkbox"/> Preliminary Right of Way Plans ▪ <i>After design stage “Plan Impacts Complete”</i>	State Road: Set up after consultation between Municipality & MaineDOT on risk
	Off System: Municipality
<input type="checkbox"/> Title Examinations	State Road: MaineDOT
	Off System: Municipality
<input type="checkbox"/> Final Right of Way Mapping ▪ <i>Shows impacted areas and types of rights</i>	State Road: MaineDOT or municipal consultant with approval
	Off System: Municipality
<input type="checkbox"/> Review/Verification of Right of Way Maps	State Road: MaineDOT Property Office
	Off System: Municipality
<input type="checkbox"/> Notice of Intent to Acquire ▪ <i>Sent to owners of impacted properties</i>	State Road: MaineDOT
	Off System: Municipality
<input type="checkbox"/> Property Appraisals & Appraisal Review	State Road: MaineDOT
	Off System: Municipality
<input type="checkbox"/> Negotiations – NEPA must be complete ▪ <i>28-day negotiation period</i>	State Road: MaineDOT
	Off System: Municipality
<input type="checkbox"/> Acquisition of Rights / Condemnation	State Road: MaineDOT
	Off System: Municipality
<input type="checkbox"/> Right of Way Certification	State Road: MaineDOT
	Off System: Municipality

5.8 Right-of-Way Plans

Once you identify property impacts, you must develop right-of-way plans showing the property needed to build and maintain a project. “Mapping” the right-of-way begins when design work reaches the milestone “Plan Impacts Complete.” Completed right-of-way plans serve as the foundations for property appraisals and the source descriptions for a Notice of Layout and Taking, a legal document filed at a county registry of deeds when an agency acquires land or permanent rights in land.

Design work is covered in Section 3, “Project Design.”

Completed right-of-way plans must, at a minimum:

- Specify the types of rights to be acquired;
- Show all affected areas by the square foot or acre for each right to be acquired; and
- Identify the legal ownership of all properties affected by a project.

Right-of-way plans can be prepared by MaineDOT staff or by a consultant approved by MaineDOT as being qualified to perform the work to MaineDOT’s standards. Roles and responsibilities must be determined and documented in the state/local agreement for a project. Additionally, right-of-way plans must be stamped by a licensed professional engineer, architect or land surveyor.

➡ Mapping work must meet standards described in MaineDOT’s Right of Way Manual, specifically Section 2-6: <http://www.maine.gov/mdot/rowmanual//docs/chpt2.pdf>

Final right-of-way plans typically include the following information:

- ☐ Construction limits and items;
- ☐ New right-of-way limits – including slope, clearing and wrought portion limits;
- ☐ Permanent and temporary easement limits;
- ☐ Updated parcel setups;
- ☐ Acquisition stations and offsets;
- ☐ Condemnation distances, including baseline and boundary lines;
- ☐ Easement limits and property lines tied into the base line;
- ☐ Calculated areas of take for each type of acquisition (fee, easement, etc. ...);
- ☐ Inside distance calculations;
- ☐ Total areas of property ownership calculated from the best available property information;
- ☐ Plan title block with MaineDOT file number – *if MaineDOT will be making acquisitions.*

The MaineDOT Property Office must review draft right-of-way plans if the State of Maine will hold title to the rights acquired or if a project is located on a state highway. The plans are not complete until they have been verified as meeting MaineDOT’s mapping standards and legal requirements.

➡ At this point, **Notice of Intent to Acquire**, outlining the acquisition process and legal rights, must be sent to each affected property owner. (*Refer to page 5-17 for an example.*)

5.9 Title Examinations

Title examinations are essential to verifying who owns the property to be acquired for a project. They take place once all property impacts are identified, since right-of-way plans require an abstract of title for each affected parcel. Title research typically produces a copy of the current deed for each affected parcel, as well as an abstract of each transaction involving the land or premises in question – including sales, mortgages and outstanding liens.

MaineDOT performs title examinations for projects on state or state-aid roads. For other projects, it is up to a municipality or other local agency to conduct title examinations using its legal staff or private title attorneys. Title investigations must follow standards set by the Maine State Bar Association, including treatment of clouds or defects in title.

You must obtain basic information for each parcel before title research may begin:

- Property owner's name;
- Property address;
- Tax map and lot identification;
- Property deed reference book and page;
- Copies of surveys, plan sheets, tax maps and property owner reports as applicable.

*Standards for title work:
MaineDOT [Right of Way Manual](#),
Sections 2-4.02 and 8-2.01.*

An indication of the greatest anticipated impact to each parcel will dictate how extensive a title search is needed. As the table below shows, permanent takes require a search spanning 40 years, while most easements and temporary rights require research only into the last acquisition or current owner of a property.

TITLE SEARCH REQUIREMENTS

Type of Acquisition	Length of Search
Fee (all right, title and interest)	Full 40-year title examination
Wrought portion (prescriptive easement) - major acquisition	Full 40-year title examination
Wright portion (prescriptive easement) – acquisition substantially same as existing area of occupation and use	Title activity since date of last acquisition/transfer
Drainage easement	Since last acquisition/transfer
Permanent easement	Since last acquisition/transfer
Slope easement	Since last acquisition/transfer
Temporary rights	Current deed only

5.10 Appraisals

An appraiser licensed by the State of Maine with proper certifications must prepare an objective estimate of the damages to each parcel affected by a project. MaineDOT maintains an appraisal register that can assist in identifying possible consultant appraisers. Before hiring an appraiser, however, municipalities and other local agencies should be sure that appraiser has experience performing valuation work on projects requiring use of eminent domain.



Caution! The owner or a designated representative must have an opportunity to accompany the appraiser during a property inspection. Otherwise, federal money for a project could be jeopardized.

➡ See the *MaineDOT Right of Way Manual*, sections 4-1, 4-2 and 8-2.03.

5.11 Appraisal Reviews

If a municipality or other local agency will acquire the rights for a project, that agency must have its appraisal of a property reviewed, either by qualified staff or by a licensed and certified appraiser not associated with the person who did the original appraisal. The reviewing appraiser provides quality assurance by checking the original appraiser's computations, methods and techniques. The reviewer will **recommend**, **accept**, or **not accept** the valuation. The reviewer's finding is the basis for an official Determination of Just Compensation.

➡ See the *MaineDOT Right of Way Manual*, sections 4-5 and 8-2.03.

5.12 Just Compensation

How is just compensation determined? Appraisers use "fair market value," the price that would be paid for a parcel if a knowledgeable and willing buyer and seller reached agreement after a reasonable period on the market. Just compensation must be based on independent and objective appraisals of fair market value. If a municipality or other local agency is acquiring rights, the person determining just compensation should be the highest ranking administrative officer, typically the town manager or chair of the select board.

The amount of compensation will depend on the type of property taken and a project's effect on that property. Here are some examples:

- **Whole acquisition.** If a whole parcel is taken, the owner will be paid for its entire value.
- **Partial acquisition.** If part of a parcel is acquired – and the overall value of the property is not affected – the owner will be paid for the part taken.
- **Severance damage.** When a parcel sustains "severance damage," an owner is paid not only for the market value and any contributory value of what is taken, but also for any resulting loss in value of what remains.
- **Uneconomic remnant.** If a partial acquisition leaves an "uneconomic remnant" that is determined to be of no value or use to the owner, the acquiring agency must offer to buy it.



5.13 Negotiations

Negotiations with owners may begin once the National Environmental Policy Act (NEPA) process is completed and a “Determination of Just Compensation” is made. A negotiator must give an owner a dated, written offer of just compensation and a summary statement of the right-of-way to be acquired for a project. The negotiator must address any questions – always being careful to be sensitive to property owner concerns. Most importantly, the process must be **free from coercion**.

An initial offer to a property owner cannot be less than the acquiring agency’s estimate of just compensation. The owner must be afforded a reasonable amount of time to consider an offer and to consult with others. MaineDOT gives property owners at least **28 days** from the last offer; it is recommended that local agencies use this timeline for their acquisitions.

Although the acquiring agency’s determination of just compensation is the basis for negotiations, an initial offer should not be considered a “take it or leave it” alternative. Information from the owner may be cause to revise the offer if, for instance, an important element of value was omitted from the appraisal or if the acquisition was not properly described in the appraisal.

Caution! The person who appraised a property cannot be the negotiator if the appraised value of the property exceeds \$10,000.

➡ See the *MaineDOT the Right of Way Manual*, sections 5-3 and 8-2.04.

5.14 Acquisition

Once negotiations have ended, an agency acquires property either by the transfer of documents (deeds) or by condemnation through a “Notice of Layout and Taking.” Except in cases where only temporary easements are required, the acquisition must include a release of the interest of any mortgagees, lessees, lien holders, or other parties.

If an affected property owner must move, the municipality or other agency in charge of a project should seek assistance from the MaineDOT project manager or Property Office, since the federal Uniform Act requires displaced persons to be offered relocation assistance in such cases.

The property owner will receive a copy of the Notice of Layout and Taking, a statement of just compensation based upon the appraisal, a copy of the plan as it relates to the parcel acquired, and a check for the compensation plus prorated taxes.



➡ If **MaineDOT** will hold title to the rights acquired for a project, MaineDOT either will perform the title searches and appraisals directly or coordinate those tasks with the municipality or other local agency overseeing a project.

5.15 Right-of-Way Certification

After filing the “Notice of Layout and Taking” with the appropriate county registry of deeds, the condemning agency must secure an attorney’s certification that the agency has obtained the required necessary rights to construct the project as designed, in accordance with all applicable federal and state requirements. (See *Communication 14*, on page 5-15.)

As explained previously in Section 5.6, “MaineDOT Responsibilities,” **MaineDOT** will provide certification if the State of Maine will hold title to the rights acquired for a project. A municipality or other local agency overseeing a project will provide certification if the title will be locally held. The certification states that all rights-of-way needed for the project have been acquired in accordance with state and federal requirements.

The signed certification must be submitted to MaineDOT before a project is advertised for construction bids. This documentation is a standard part of the final Plans, Specifications and Estimate (PS&E) package for a project. A project cannot be put out to bid without it.

5.16 Documentation

As with all other phases of a project, it is important to retain all records relating to the right-of-way process. The following documents should be kept for at least **four years** for purposes of audit:

- Valuation summaries and reports;
- Offer letters;
- Negotiator’s logs;
- Correspondence with property owners; and
- Settlement agreements.

Appendix 5A: Right of Way Checklist



CHECKLIST: RIGHT-OF-WAY PROCESS

- ☐ **Limits of existing public right of way confirmed:**
 - Survey data
 - County layout records
 - Municipal “road book”
 - Plans from previously completed MaineDOT projects
- ☐ **Property Owner Reports completed**
- ☐ **Design plan impacts completed (*Communication 9*)**
 - Plans show all impacts to abutting properties, outside the existing right of way
 - Plan impacts reviewed and accepted by MaineDOT
- ☐ **Parcel summary completed, including:**
 - Listing of owners impacted
 - Description of type of rights to be acquired from each owner
 - Donations, if any
- ☐ **Title examinations conducted (*See MaineDOT R/W Manual §8-201*)**
- ☐ **Right of Way mapping complete (*See MaineDOT R/W Manual §8-202*)**
 - Listing of abutters by name and address
 - Existing right-of-way limits shown
 - Property pins listed
 - Abutting ownerships shown, from title abstracts
 - New rights to be acquired shown, with area calculated (MaineDOT Standards)
 - Plan title block included, with MaineDOT file number if applicable
 - Right-of-way maps reviewed by MaineDOT Property Office (if state highway)
 - Maps approved by MaineDOT Property Office (if state highway)
- ☐ **Written Notice of Intent to Acquire sent to the owner of each impacted parcel**
- ☐ **Determination of Just Compensation made (*See MaineDOT R/W Manual §8-2.03*)**
 - Necessary information provided to appraiser
 - Property owner provided an opportunity to accompany the appraiser
 - Appraisal format eligibility determined parcel by parcel
 - Appraisals reviewed where required
 - Written statement of Just Compensation prepared

➔ **Federal NEPA process must be completed before negotiations begin**

- ☐ **Negotiations initiated with owners – after NEPA process completed**
 - Offers presented; impacts discussed with all owners
 - Each owner given reasonable period to consider offer (MaineDOT provides 28 days)
 - Negotiations Completed / Negotiations at Impasse
- ☐ **Property Donations, if applicable (*See MaineDOT R/W Manual §8-2.07*)**
 - Owner informed of right to have appraisal done and to receive just compensation
 - Owner signs form acknowledging rights and releasing municipality from obligation.

- ☐ **Title and Rights Perfected**
 - Title Acquired by Negotiations
 - Title Acquired by Eminent Domain (*See MaineDOT R/W Manual §8-2.08*)
- ☐ **Right of Way Certified (Communication 14)** [*See MaineDOT R/W Manual §2-2.02(b)*]
 - All Right of Way Acquired
 - Rights to Occupy All Right of Way Acquired
- ☐ **Parcel and Project Files**
 - Parcel Files Complete (*See MaineDOT R/W Manual §8-4.01*)
 - Project Summary Records (*See MaineDOT R/W Manual §8-4.02*)
- ☐ **Title and Rights Acquired by State of Maine (state or state-aid road)**
- ☐ **Title and Rights Acquired by Municipality** (local road or off-system trail)

Appendix 5B: Letters and Forms

INSTRUCTIONS: *This must be submitted on letterhead with the attached right-of-way certificate with the PS&E package for a federally funded project.*

Date _____

_____, Project Manager
Maine Department of Transportation
Bureau of Project Development, Multimodal Program
16 State House Station
Augusta, ME 04333-0016

Subject: Right-of-Way Certification
MaineDOT WIN _____

Dear _____:

Attached is the official certification that all right-of-way necessary for construction and maintenance of **[project scope, WIN]** in the Municipality of _____ was obtained in accordance with federal and state requirements identified in the executed Project Agreement with MaineDOT dated **[execution date]**.

All information about the right-of-way process can be made available to you at your request. If you need additional information, please let me know.

Sincerely,

_____, Local Project Administrator
Municipality of _____

Enclosure: Right-of-way certificate

MUNICIPALITY OF _____

RIGHT OF WAY CERTIFICATE

FEDERAL
PROJECT

WIN

ROUTE

LOCAL NAME

RIGHT OF WAY ACQUISITION REQUIRED AS DESCRIBED BELOW:

Property
Owners

Fee Simple
Parcels

Easement
Rights

Number of Cases

Displacement Summary:

Number Displaced

Number Relocated

The Municipality of _____ hereby certifies that the right to occupy and use all the rights of way necessary for this project has been acquired by [] deed, [] condemnation or [] permit to work. All right-of-way has been or will be acquired in accordance with the current FHWA directive(s) covering the acquisition of real property and all relocations have been accomplished.

☐

Without Exception

Legal Possession completed as of

All families and individuals relocated from this project have been offered decent, safe and sanitary housing, as defined in 49 CFR Part 24: All parties receiving replacement housing payments have been relocated to DS&S housing. Relocation procedures used on this project conform to the standards established by federal regulation.

Signed by:

Local Project Administrator

Date

NOTICE OF INTENT TO ACQUIRE

Date :
Project#:
WIN:
Parcel:
Route #:
Town:

Dear Property Owner(s):

The Municipality of **[Name here]** is currently working on plans for a transportation improvement project located at **[project location]**. This letter informs you of the proposed project and your involvement as a property owner. The plans indicate the Municipality will acquire a portion of your property and/or rights in land as part of this project. A representative of the Municipality will contact you in the near future regarding the project and its impact on your property.

You are entitled to due process and just compensation as outlined in the accompanying brochure, which summarizes the property acquisition process.

If you decide to sell your property, state law requires that you inform the potential buyer that the Municipality intends to acquire an interest in this property.

If you have questions pertaining to the procedures you can contact me at this office by telephone, <ENTER PHONE NUMBER HERE>. Our intention is to have you understand what is being done and why it is being done, with the least amount of inconvenience to you as an involved property owner.

Thank you for taking your time to understand our procedures.

Sincerely,

<HERE SIGNATURE HERE>
Local Project Administrator

Donation and Acknowledgement/ Waiver of Agency Obligations

MUNICIPALITY OF _____

FEDERAL PROJECT NO.: _____

MAINEDOT WIN: _____

PARCEL/ITEM NO: _____

OWNER(S): _____

(I)/(We) acknowledge having been informed of the right to receive just compensation based upon an approved appraisal. Notwithstanding, I/we desire to donate the right of way (land and/or rights therein) and release

_____ from its obligation to provide an appraisal and offer for the real estate needed for the above referenced project. This donation to the _____ is made without coercive action of any nature.

DATED:

WITNESS

SIGNATURE OF OWNER(S)

PROPERTY OWNER REPORT

Note: MaineDOT uses this form to obtain basic information on the parcels along the route of a project. It is included here as guidance on the type of information typically sought from property owners.

Tax Map

Block

Lot

WIN
Town
Date

Owner of Property:

Spouse:

Contact Person for Companies/Agencies:

Legal Address:

Mailing Address:

Home Phone:

Business Phone:

Can Owner be Contacted at Home? Yes No At Work? Yes No

PROPERTY INFORMATION

Deed Information:

Book:

Page:

Date:

Remarks:

Name of Previous Owner: _____

Boundary Line Markers: Yes No Type: _____

If a fence or hedge exists, do you or your neighbor own the fence or hedge? _____

Date Building Built: _____

Any Cemeteries on Property? Yes No

Is Property or Building registered as a Historic Site? Yes No

Is Property considered Park lands, commonly referred to as 4F lands? Yes No

Is Property licensed with the Federal Energy Regulatory Commission (FERC)? _____

Has Property been Surveyed? Yes No

Is Survey Recorded? Yes No

Name of Surveyor: _____ May We Obtain a Copy? Yes No

Approximate Frontage on Highway: _____ Total Area of Lot: _____

Water Supply: Drilled Well (ft.) Dug Well (ft.) Spring Municipal Well Point (ft.)

Has Supply been Adequate for the Past Five Years? _____ No. of People: _____

Is Location of Water Source Known? Yes No (If yes, show on sketch of property)

Sewage: Septic Tank & Leach Field / Cesspool / Municipal / Other_____

Is Location of Sewage System Known? Yes No (If yes, show on sketch of property)

Private Pipes or Wires Into or Under Highway? Yes No Pipes Wires

Property Use Residence: Yes No Owner Occupied or Rented:

If Rented, No. of Units: Number of Tenants:

If Farm Property: Count of Stock Acres of Pasture

Acres Cultivated Acres Leased Acres Non-Locus to Farm:

Is Property under Maine Tree Growth Law? Yes No

If Commercial Property: Type Owner Occupied or Leased:

Name of Lessee:

Underground Storage Tank(s)? Yes No / Gas Diesel Heating Oil

Chemical or Hazardous Substances? Yes No (If yes, show on sketch of property)

Do you own the Tank(s)? Yes No If no, name of owner:

Owner's Comments:

PLEASE MAKE SKETCH OF PROPERTY: (Use Separate Sheet if Necessary)

Appendix 5C: Right of Way Manual

Section 8: Local Agency Acquisition



MaineDOT

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CHAPTER EIGHT

LOCAL AGENCY ACQUISITION

8-1 LOCAL AGENCY ACQUISITION POLICY

8-1.01 Partnering with Municipalities

Citizens of Maine and the community benefit when local officials acquire right of way under agreement with the Maine Department of Transportation. Local officials know the needs and concerns of citizens. Property owners in the path of highway development are more likely to amicably settle property acquisition claims on the basis of fair market value when they are approached by officials they know, who share the same community interests. This enables highway projects to be completed expeditiously and at reasonable cost. It also results in a high degree of citizen satisfaction with the right of way process and the completed project.

Private ownership of property is a basic American right that is protected by the United States and the Maine Constitutions. The taking of property is constitutionally conditioned on public necessity and on payment of just compensation for property that is acquired for a public need. Federal and state legislative enactments provide additional citizen protections and rights. These control the process by which property is acquired and are intended to ensure that persons who are affected by acquisition are not disproportionately injured by projects that are intended to benefit the public as a whole.

The Maine Department of Transportation (MaineDOT) assists municipalities to acquire real property that is needed for highway projects in compliance with Federal and Maine law. This Chapter sets forth basic requirements of law and State policy. It describes and explains the critical steps in the property acquisition process. The objective is to enable local officials to proceed with confidence that they are conforming to all requirements of the law, reducing the amount of time devoted to the research and study of procedures and rules.

This Chapter is intended to serve as a concise breakdown of the right-of-way acquisition process regarding local projects. Local agencies are still required to follow the relevant chapters of this Manual for the portions of the acquisition process that they undertake as part of their respective projects. This Chapter does not address unique or complex situations. Right of way acquisition is a human endeavor. Circumstances will arise that are not addressed by this brief coverage and that may be outside the experience of officials charged with this function. To address this situation, MaineDOT assigns a liaison representative to advise and consult on project right of way issues and problems. The assigned MaineDOT staff will have varied statewide experience and will provide practical advice that conforms to applicable law and regulations. In addition, the MaineDOT representative will strive for program consistency so that citizens are treated fairly and equitably, without regard to the part of the State they live in or the nature of their occupancy or type of acquisition.

8-1.02 Administration

Local agency projects are administered at MaineDOT in the Bureau of Project Development's Multimodal Program. Projects that will be developed and delivered locally are identified during development of the MaineDOT Work Plan. MaineDOT support and guidance are provided by the Multimodal Program. A Project Manager (PM) is assigned to oversee a locally administered project and will arrange for resources within MaineDOT to assist in this oversight. This PM will engage the Senior Property Officer in the Multimodal Program to assist a local agency in its right-of-way needs.

8-1.03 MaineDOT Services

MaineDOT will perform the following activities with regard to locally administered right-of-way acquisition projects:

1. Ensure that the project is in the MaineDOT Work Plan and that Federal funding is committed, if applicable. The Multimodal Program will assure that proper R/W authorizations are in place
2. Consult with local officials to identify the scope, schedule and cost of right-of-way acquisition. Generally, if the acquired property will become State owned, MaineDOT will be responsible for the acquisition. If the property will become municipally owned, the local agency will be responsible for the acquisition with guidance from MaineDOT.
3. Prepare an agreement in consultation with local officials defining the state/local project responsibilities.
4. Provide current and continuing advice on the application of state and federal laws and regulations concerning right of way acquisition to specific project and parcel problems and situations.
5. Provide revisions and updates to regulations, policies, procedures and guidance material.
6. Provide training to local staff that are or will be engaged in right of way acquisition. Training is normally delivered through an agreement with professional organizations including the National Highway Institute, the International Right of Way Association or the American Association of State Highway and Transportation Officials as well as MaineDOT's Local Project Administration Training.
7. Monitor the performance of right-of way-activity in conformity with MaineDOT's Quality Assurance/Quality Control Program. See Chapter 10 for further detail.
8. Provide referrals of qualified and experienced private service providers in right of way functions, including appraisal, negotiations, relocation, legal services and title work.
9. Provide reimbursement for eligible costs based on supported claims that are submitted by the local jurisdiction.

The MaineDOT Senior Property Officer or Project Manager will perform many of these services. The municipality shall maintain continuing contact with the representative through the property acquisition phase of the project. Normally, the Senior Property Officer will meet with the responsible municipal officials at an early stage in the project to review policy questions and the project schedule and to discuss any critical or complex cases.

For all property acquired, whether acquired by a municipality or MaineDOT, it is MaineDOT's ultimate responsibility to ensure that the acquisition is accomplished in accordance with all applicable State and Federal laws, regulations, and policy. Coordination between MaineDOT and the local agency can be an essential element in providing that assurance. The Senior Property Officer in the Multimodal Program will closely monitor the acquisition activities of the agency on a regular and ongoing basis.

8-1.04 MaineDOT/Municipality Agreement

A formal agreement defining the roles and responsibilities of the municipality and MaineDOT will be executed for every project on which a municipality will assume responsibility. This is a comprehensive agreement covering all phases of work, including right of way. The agreement will normally provide for complete assumption by the municipality of all right of way acquisition responsibility as stated previously in Subsection 8-1.03. However, specific activities may be reserved for MaineDOT performance. This may include the relocation of residents who will be displaced as a result of acquisition. Any municipality opting to acquire right of way as part of project administration shall follow the requirements of the Uniform Act and the procedures outlined in this Manual.

The agreement will state that the standard of performance for right of way work will meet the requirements of the **Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970**, as amended ("**Uniform Act**"). This Chapter sets forth the basic and minimum requirements of the **Uniform Act** for the acquisition of property where no relocation is involved.

The MaineDOT/Municipality Agreement is an open-draft document that is intended to address the circumstances of specific projects. MaineDOT staff will consult with local officials in advance concerning the scope and content of the agreement so that it is relevant to the project and meets the needs of both parties.

8-1.05 Applicable Laws and Regulations

The local agency performing property acquisition is subject to the same laws and regulations as if MaineDOT were the acquiring agency. Following is a brief summary of the legal authorities that control the acquisition of real property for right of way:

1. U.S. and Maine Constitutions. Both require public necessity and payment of just compensation for the taking of private property. Additionally, the U.S. Constitution requires due process when States acquire privately owned property.

2. **The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970** (amended 1987.) The **Uniform Act** is landmark Federal legislation that applies to all property acquisition for Federal or Federally-funded projects. States, including Maine, have enacted legislation that enables compliance with the Federal law. Maine, through State law, has extended its provisions to State-funded projects.

The **Uniform Act** extends a system of rights and protections to property owners, with corresponding obligations for acquiring agencies. It sets forth a process for establishing value (just compensation) and negotiating with owners to encourage amicable settlements, thereby minimizing having to resort to the courts for condemnation. An important part of the **Uniform Act** provides a system of protections and benefits to persons who are displaced as a result of public projects. The procedural provisions described in this Chapter arise from the requirements of the **Uniform Act**.

3. 23 CFR 710. The **Code of Federal Regulations (CFR)** provides interpretive detail to Federal law and carries the full force and effect of Federal law. The above regulatory reference pertains to real property acquisition policy for highways.
4. 49 CFR 24. This is the Federal regulation that sets forth policy in implementing the relocation provisions of the **Uniform Act**.
5. Title 23 MRSA Part 1. State highway law contains provisions at Sections 61, 63, 73 through 246, 652 and 653 pertaining to the acquisition of real property and the relocation of displaced persons. Municipalities acquire property under authority of Title 23 Part 3, Chapter 304 (see below). However, this Chapter refers back to Sections 154 through 154E in Part I for purposes of determining damages to real property.
6. Title 23 MRSA Part 3 Chapter 304. This is the Maine Revised Statute pertaining to local highway law. Chapter 304 defines the acquisition of property for highway purposes.

The Maine Statutes referenced above are fully conforming to the detailed provisions of the **Uniform Act** and the implementing regulations in 23 CFR 710 and 49 CFR 24.

8-1.06 Transfer of Title to the State of Maine

If a municipality acquires fee title and/or easements on a State or State-aid road, title to the facility will be transferred to the State of Maine when the project is complete. The process for the transfer will be determined in consultation with the Property Office in the MaineDOT Bureau of Project Development.

8-1.07 Quality Assurance

MaineDOT is committed to continuously improving the quality, efficiency and effectiveness of its programs and services. In partnering with MaineDOT, a municipality or local agency assumes a role in quality assurance. MaineDOT's concept of quality is based on the premise that every person involved in the process at any level has a responsibility for advancing quality. It is not exclusively a management, supervisory or audit function. The following activities are appropriate quality advancement measures that a municipality can undertake in performing real property acquisition:

1. Perform a second-party internal review of all documents before they are delivered to the property owner. This includes appraisals, agreements, and instruments of conveyance, offer letters, etc.
2. Provide relevant training to agency personnel who are engaged in specialized right of way activity (e.g., appraisal, negotiations, titles, relocation).
3. Perform quality spot checks of completed work concurrent with any ongoing project acquisition activity.
4. Perform peer reviews of work activity when there is more than 1 staff person involved in property acquisition for right of way.
5. Conduct phone or mail surveys of property owners following acquisition.
6. Develop internal procedures or policy to apply to specific recurring situations or circumstances in order to ensure consistency and equitable treatment.
7. Perform joint project reviews between MaineDOT and local agency management staff.

The above are examples, but not an exhaustive list, of quality assurance actions. Other measures may be appropriate and effective depending on agency staffing, organization and the project. Specific quality assurance measures may be suggested by MaineDOT and incorporated into the MaineDOT/Municipality Agreement.

The agency quality assurance activities do not replace audits and reviews that are performed by State, Federal or local audit authorities. MaineDOT has responsibility under 23 CFR 710.203(c) to monitor property acquisition activities conducted by political subdivisions to ascertain that right of way is acquired in accordance with the provisions of State and Federal laws and as required by Federal Highway Administration directives.

8-2 ACQUISITION PROCESS REQUIREMENTS

The procedural items discussed in this Section are basic requirements of the ***Uniform Act*** in the process of acquiring real property for highway right of way. They are presented with minimum detail in order to afford flexibility to municipalities to adapt their process to their organization structure and the nature of the project. Additional information can be secured from the other chapters of this *Manual* that pertain to individual acquisition functions. Also, information and advice will be available from the Senior Property Officers and Property Office.

8-2.01 Title Investigation and Certification

Title investigations and certifications may be performed by municipality legal staff, or may be contracted to private attorneys.

Municipalities will follow the standards established by the Maine State Bar Association for title examinations, including treatment of clouds or defects in title. Exceptions to these standards will be acceptable only on approval of the MaineDOT Legal Services Office.

As soon as the right of way acquisition needs are identified for a project, acquisition to date titles will be prepared for all properties from which either permanent or temporary rights will be acquired. This work will enable detailed plotting of property lines and ownership information on plans.

Detailed guidance on title examinations for highway acquisition, including length of title search history for different types of takings is provided in Chapter 2. Section 2-4.03 provides guidelines for handling clearance of mortgages and other liens on property. On property acquired by deed, liens will be extinguished by securing releases, or the lien holder will be named as payee on the check for settlement in accord with criteria for different types of acquisitions defined in Section 2-4.03.

A final rundown of title will be performed on all acquisitions immediately before recording the acquisition documents. The municipality will secure an attorney's certification that the municipality has secured the required necessary rights to construct the project as designed, and that all applicable Federal and State requirements governing these acquisitions are satisfied. A final project certification will be made using the format of the MaineDOT Certification statement referenced in Chapter 1, Section 2.02(b).

8-2.02 Right of Way Mapping

Right-of-way mapping involves gathering and managing real property information and highway system information, and preparing the right-of-way plans and acquisition documents necessary to acquire property for highway projects. This section provides a brief overview of the mapping function. Detailed requirements for mapping are contained in Chapter 2.

The initial step in mapping is gathering data on ownership and improvements on each parcel of land the project is likely to affect. Mapping personnel then determine property rights underlying the existing or proposed transportation facility. Mappers will translate the information into preliminary right of way maps that show the existing limit of the right of way or other Public ownership. Mappers later prepare final right of way plans that document the new right of way limits of the project, basic design features including entrances and slopes, and the areas and types of acquisitions needed for the project. The final right of way plan serves as the basis for the parcel descriptions included in the property acquisition documents. A municipality will need to provide maps and property plats for the condemnation cases.

Municipalities may contract for performance of mapping functions. Guidance for the mapping process is contained in Chapter 2. The MaineDOT Property Office unit can provide detailed advice on mapping specifications or questions on specific project situations.

Notice of Intent to Acquire must be provided to owner before the start of the valuation phase.

8-2.03 Determination of Just Compensation

Just Compensation is the measurement of damages resulting from a taking under power of eminent domain. The agency's estimate of just compensation is determined by means of real estate appraisals, which are independently reviewed by a qualified review appraiser, or MaineDOT approved waiver valuation procedure.

The Just Compensation determination must be made by an authorized official within the acquiring agency. MaineDOT recommends that on municipal acquisitions the official determining Just Compensation be the highest ranking administrative officer in the municipality, typically the Manager or First Selectperson.

Independent contract appraisers in Maine are certified or licensed by the Maine Department of Professional and Financial Regulation. MaineDOT maintains an Appraisal Register, which is a current listing of consultant appraisers who are properly licensed or certified and are otherwise qualified by experience and performance to appraise property to be acquired for highway right of way. MaineDOT recommends that a municipality contract with an appraiser on the Appraisal Register in accordance with Local Project Administration certification

When using an independent appraiser, consider the following:

1. **Information Provided to the Appraiser.** It is critical that the appraiser be provided with sufficient information to value the property rights to be acquired. The following should be provided:
 - a. Name, address and phone numbers of the owner(s);
 - b. Preliminary title information indicating current ownership and recent sales;
 - c. Description of the property rights to be appraised; and scope of work.
 - d. Plan sheet indicating property lines and taking, including grade changes and mitigation measures (e.g., driveway restorations or landscaping).

2. Provide Owner the Opportunity to Accompany Appraiser. The appraiser must provide an opportunity to the property owner to accompany the appraiser in an inspection of the property. This is a basic requirement of the **Uniform Act** and cannot be waived. The appraiser should document efforts to contact the owner as well as provide the owner's response to the offer to accompany the appraiser.
3. Appraisal Format and Number of Appraisals. When developing the appraisal, consider the following:
 - a. MaineDOT uses a Short Format Appraisal to value property when there are no damages or special benefits to the remainder and the highest and best use of the remaining property is not changed. This is discussed in Section 4-2.04.
 - b. MaineDOT may waive a formal appraisal of uncomplicated acquisitions where the value of the taking does not exceed \$15,000. In this instance, just compensation is determined by a qualified person, not necessarily an appraiser, through a simplified valuation process based on direct comparison with available market sales information. In order for an assessor to be deemed qualified, they must be either a Certified Maine Assessor or a Certified Assessment Technician. This process is fully described in Chapter 3. It should be noted that the administrative acquisition process is used only when settlement can be reached on this basis after explaining the process to the owner.
 - c. Some acquisitions will require more than one appraisal to be performed. Circumstances for a second appraisal include the property or the acquisition being of high value or uncertainty existing about the highest and best use of the property either before or after the acquisition.
 - d. Before acquisition, the Senior Property Officer will review the expected property acquisitions with local officials and jointly agree as to the proper appraisal format to be used and acquisitions in which more than one appraisal is appropriate.
4. Appraisal Review to Determine Value. The just compensation offer that will be presented to the property owner as just compensation is determined by a formal review of the appraisal(s) secured for the property. The appraisal review function may be performed by a qualified agency representative or by a licensed or certified contract appraiser. The appraisal review will include a check of the factual information and computations in the appraisal. It will also conclude a fair market value for the acquisition based on an evaluation of support and reasonableness of the appraisal value conclusion. The review appraiser is responsible to secure any needed appraisal corrections or additional documentation. The appraisal review process is discussed in Section 4-5.

5. Approval of the Appraisal: After the review is completed for projects on MaineDOT's system, appraisals will be approved at the MaineDOT by the Senior Property Officer overseeing the right-of-way phase of the project.
6. Written Statement of and Basis for Amount Established as Just Compensation. A written offer of just compensation must be prepared for presentation to the owner, accompanied by a summary statement of the basis for the amount the agency has established as just compensation. The summary must provide the following information to enable the owner to make a reasonable judgment concerning the amount of the offer:
 - a. A description and location identification of the real property and the interest in the real property being acquired;
 - b. Identification of buildings, structures and other improvements, including removable building equipment and trade fixtures, considered to be part of the real property to be acquired; and
 - c. The amount established as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and for damages to the remaining property must be stated separately.

8-2.04 Negotiations with the Owner

Agencies that acquire private property for public projects are aware of the need to be sensitive to property owner concerns as well as their rights under the Maine and the U.S. Constitution and laws. Most owners are willing sellers, but the process is involuntary in that an owner lacks the option not to sell. Therefore, it is important to negotiate for acquisition with a high degree of preparation, knowledge about the public need (i.e., the project) and professionalism in contacts with owners. Before negotiations can begin, **the municipality must ensure that the NEPA process is complete** and that the appropriate documentations are in place. Failing to complete this step and initiating negotiations before NEPA is complete will jeopardize all federal participation in the project. A municipality must check with the MaineDOT's Senior Property Officer or Project Manager to ensure that NEPA is complete before making offers. All offers must be made in writing.

The agency representative should present the written offer of just compensation in person, explain the project and the need for acquisition, and address any owner questions about the offer and the valuation process. In addition, the representative should discuss the project schedule and any effects of the acquisition or the project on remaining property. Sufficient time should be provided to the owner to consider the offer and to consult with others concerning the acquisition and the reasonableness of the offer which shall be at least four weeks in the event condemnation is needed. This may require follow-up contacts. The agency has a responsibility to make every effort to acquire property expeditiously by negotiations.

The agency-determined just compensation is the basis for negotiations, but the offer cannot be considered a “take it or leave it” alternative. Information provided by the owner may be cause to revise the offer, for instance, if an important element of value was omitted from the appraisal or the acquisition was not properly described in the appraisal. Also, the agency has authority to administratively increase the offer amount if this would promote a settlement that would be in the overall public interest. Reasons for administrative settlement need not be based on valuation, but might consider other factors including condemnation costs, need for expeditious settlement or the risk of a court award that is significantly greater than the agency determination of value.

Any administrative settlement offer that is above the established just compensation must be fully explained in the file by the authorizing official, with an explanation of how the offer is in the public interest. All contacts with owners during negotiations should be documented on a diary log that states the date of contact, the parties contacted and a summary of the discussion.

8-2.05 Tenant-Owned Improvements

The property acquired may include buildings, structures or other real property improvements that are owned by a tenant rather than the landowner. The tenant may have a lease that specifies that improvements be removed at termination of the lease. Tenant-owned improvements are more likely to be encountered on commercial use property. Examples include trade fixtures in a retail store or a panelized walk-in cooler for a restaurant. A tenant-owned improvement on a residential property might be an outbuilding (e.g., a storage shed) or a swimming pool.

Property that would be considered real property if it is owned by the landowner is also considered real property for acquisition purposes. The agency must acquire interest in tenant-owned improvements that are located on property that is acquired for the project. A separate offer of the value of the improvements must be made to the tenant owner, but only if the landowner first disclaims any interest in the improvements. If the landowner refuses to disclaim interest, the tenant is advised of this fact. The acquisition payment to the landowner will include the value of the improvements. Disputed ownership will then be a matter to be resolved between the landowner and the tenant.

The value of tenant-owned improvements will be determined as the greater of the amount that the improvement contributes to the fair market value of the whole property, or the value for removal, which is the same as salvage value.

8-2.06 Uneconomic Remnants

An uneconomic remnant is a remainder property after acquisition that the acquiring agency determines has little or no utility or value to the owner. The **Uniform Act** requires that the agency offer to purchase uneconomic remnants. This requirement is based on the reasoning that an owner should not be burdened by having to maintain and incur taxes and other costs for a property remnant that is created by the public taking that is of no value or use to the owner. The decision to sell the uneconomic remnant is voluntary on the part of the owner.

8-2.07 Donations

Once they have provided a Notice of Intent to Acquire, the acquiring agency may accept donation of the property or any part of the compensation that would be due to the owner for the acquisition and must inform the owner of the right to have the agency appraise the property and be offered just compensation. However, in accepting a donation, the agency must receive owner acknowledgement in writing that they understand their rights to an appraisal and just compensation and they release the acquiring agency from its obligation to provide an appraisal. If the motivation for donation is a tax reduction, the owner should be advised that the Internal Revenue Service requires an independent third-party appraisal to support any deduction from taxes. The agency may, at its election, reimburse the owner's cost for an appraisal. The selection of an appraiser and compliance with tax law requirements is the property owner's responsibility.

It is important that the agency not take any action that could be perceived as coercive of the owner to donate property. An example of a coercive act would be to tell an owner: "All your neighbors have agreed to donate. They are going to be unhappy to know this project is delayed because of your refusal to donate". Donations negotiated for the project but before signing a project agreement, are still subject to Uniform Act acquisition requirements on federally funded projects.

8-2.08 Exercise of Eminent Domain

The municipality acquiring real property should make every reasonable effort to settle amicably through negotiation. If municipal officials determine after sufficient contacts that a settlement based on negotiations is not feasible, and the project schedule requires immediate taking of property interests, title should be acquired by filing a condemnation order in the manner specified in State law – 23 MRSA Chapter 304, Section 3023. The municipality will issue a check in the full amount of determined damages, fair market value, for delivery with the service of record copy of the condemnation order. Service on any one of multiple owners will be considered service on all owners. Title will pass to the municipality on service of the order of condemnation and check, or recordation of the deed or certificate as specified in 23 MRSA Section 3024, whichever occurs first.

A property owner who is not satisfied with the determination of damages that are awarded in the process of eminent domain as described above may appeal to the Superior Court in the county where the property lies. The owner's appeal to the Superior Court must be made within 60 days after the day of taking as specified in 23 MRSA Section 3029.

8-2.09 Payment for Property Before Being Required to Surrender Possession

The **Uniform Act** requires that no owner be required to surrender possession of real property before the acquiring agency pays the agreed purchase price. This requirement is served in condemnation by the process described in Section 8-2.08. In negotiated settlement, the municipality will deliver a payment check to the owner in the full amount of the agreed settlement before the agency takes physical possession of the property or requires the owner to vacate the property.

8-2.10 Payment for Expenses Incidental to the Transfer of Title

The acquiring municipality will pay actual and reasonable costs of transferring the title to the acquired property, including:

1. Recording fees, transfer taxes and similar expenses, if any, that are incidental to conveying the property to the municipality;
2. Penalty costs for prepayment of any preexisting recorded mortgage encumbering the real property; and
3. The pro rata share of real property taxes paid by the owner for the period after the date of vesting title or the effective date of possession of the property, whichever is earlier.

8-2.11 Written Advance Notice to Vacate Occupied Property

No person who is legally occupying real property will be required to move from a dwelling or to move a business or farm operation without at least 90 days' written notice from the acquiring agency of the earliest date by which the move is required. The occupant should have a reasonable length of time to find other adequate facilities (e.g., housing or replacement business site) and to effect an orderly relocation.

The timing, content and delivery of a notice to vacate are determined by the Relocation Program procedures. If issuance of a formal notice to vacate is required, the municipality should consult with the MaineDOT Senior Property Officer to ensure that the notice complies with all regulatory requirements.

Less than 90 days' advance written notice is permitted, with FHWA approval, if continued occupancy of the property would constitute a danger to the person's health or safety. The determination and circumstances must be included in the project files.

8-2.12 Relocation of Residents or Businesses

The municipality may pay for the relocation of minor personal property items from the acquisition area to remaining property as a direct reimbursement claim based on the owner's actual and reasonable cost.

The relocation of residences, businesses or farms must be undertaken in strict compliance with Subparts C, D, E, and F of the **Uniform Act** and Chapter 6 of this Manual. Relocation is a highly specialized activity. MaineDOT recommends that the municipality consult with the assigned Senior Property Officer at the earliest time that a possible residential or business displacement is identified. The circumstances will be reviewed and determination made as to whether the relocation function will be performed by the municipality, contracted to a qualified private party or performed by MaineDOT staff.

It is important to know that property acquisitions that involve relocation will require significantly greater lead time than those acquisitions involving land only. There is an absolute requirement to make comparable replacement housing available to each displaced person or household and to provide at least 90 days' notice after a displacee is advised of the availability of replacement housing. The agency must schedule the project to accommodate the relocation time requirements.

Relocation costs must be actual, reasonable and necessary.

8-3 PROPERTY MANAGEMENT

The municipality is responsible for maintenance, security and management of acquired land improvements after acquisition. This includes the following items:

1. Rodent Control. Properties should be inspected after acquisition for rodents and other hazardous conditions. If an inspection finds rodent infestations, the municipality must take removal actions to prevent migration to nearby properties. This should be performed before the demolition of any improvements.
2. Hazardous Substances. Buildings containing asbestos or other hazardous materials must be demolished in compliance with state and federal criteria for these conditions. See Chapter 7 for further information.
3. Security and Safety. The municipality is responsible for maintaining safe conditions at acquired sites. This includes preventing blighting influences to adjacent property by removing accumulations of trash and taking measures to control vandalism and dumping. Buildings should be secured appropriately, including boarding or fencing if necessary. Particular attention must be given to removing conditions that could attract and be hazardous to children.
4. Demolition or Removal of Structures. Structures may be sold for removal from the site or be demolished. If structures are sold, the municipality must use a fair and open process for selecting a buyer, require a cash security deposit or bond to guarantee performance, and require insurance to indemnify the municipality and the State from any liability.

The municipality may demolish structures with its own forces or contract for demolition before construction, or removal may be included as a work item in the highway construction contract.

The owner of acquired land may retain ownership of structures for removal to remaining property. This should be arranged during the negotiations for the property, with appropriate adjustment to the fair market value to reflect the retention value of the structures.

5. Rental of Acquired Property. Normally, the construction schedule will preclude the rental of acquired property before construction. If the project is delayed or if property is acquired significantly in advance of project need, the municipality may allow occupancy for public or private use. If rented, the amount charged may not exceed what is appropriate for short-term occupancy in the area. The rental or use and occupancy agreement should specify that occupancy after agency acquisition does not create any right or obligation by the municipality or MaineDOT for relocation benefits of any kind.

Revenues generated from the rental of property or the sale of improvements will be applied to reduce the net cost of the project.

8-4 PARCEL AND PROJECT RECORDS AND REPORTS

8-4.01 Parcel and Project Files

The acquiring agency will keep a separate file for each real property acquisition and a file for the right-of-way project as a whole. The records will be sufficient to demonstrate compliance with applicable laws and regulations. The following will be included in the parcel and project files:

1. Right of way map or plan showing the right of way acquired, including parcel numbers property lines, area acquired and structure improvements and fences;
2. Project plans and property plats, sketches, descriptions, or photos;
3. Property ownership information, including title reports;
4. Appraisal Reports and related assignment and contract documents;
5. Statement of determination of fair market value;
6. Offer letters to property owners;
7. Negotiations logs or contact sheets;
8. Correspondence with property owners and MaineDOT;
9. Settlement agreements and contracts and justifications for administrative settlements;
10. Condemnation documents and filings;
11. Credits for sale or rental of property; and
12. Documents relating to property management or the rental or sale of property and structures.

8-4.02 Project Summary Records

Project summary data should be maintained as agreed in consultation with MaineDOT for each project. This may include a summary sheet showing key dates for each parcel, indicating:

1. Appraisal assignment,
2. Date the appraisal was received,
3. Date and amount of the fair market value that was established,
4. Date a written offer was presented to the owner and negotiations were initiated,
5. Date and amount of the settlement,
6. Date condemnation was filed,
7. Date the title was transferred,
8. Costs of excess land and any uneconomic remnants acquired,
9. Incidental expenses by parcel, and
10. Cost of construction items performed for mitigation of damages.

Specific project summary data will vary with the type of project and character of work to be performed. Projects with relocation may require a different data set.

MaineDOT and the municipality are subject to audit by state authorities, the FHWA and the U.S. Department of Transportation. Beyond the information noted above, sufficient documentation should be retained in files to track the origin and basis for any costs that are charged to the project as specified in federal regulation 2 CFR Part 200.

MaineDOT provides summary information on acquisition and relocation annually to the FHWA in order to carry out national program reporting responsibilities. The municipality will provide contributing information on projects under its responsibility.

8-4.03 Acquisition Policy Resources

The following Right of Way Program information resources will be provided to the municipality on initial assignment of responsibility for right-of-way project acquisition:

1. The MaineDOT Right of Way Manual;
2. The FHWA Real Estate Acquisition Guide for Public Agencies;
3. Maine Revised Statutes Annotated, MRSA Title 23;
4. U.S. Code of Federal Regulations, 23 CFR 710, and 49 CFR 24; and
5. Policy memoranda and guidance issued by MaineDOT and the FHWA.

8-4.04 Confidentiality and Retention of Records

The municipality should ensure that all parcel and project files relating to appraisals and negotiations are secure and that only those persons qualified to access the files are allowed to view them. These records are not available for public information except as noted below and their integrity should be carefully maintained. Access to confidential records should be restricted to officials of the municipality, MaineDOT, the State Auditor and the Federal Highway Administration. Because these data provide the documented support for the establishment and payment of just compensation required by law, they should be secured in a safe area with backup records developed as considered necessary. This is especially important if the data are maintained in computerized form.

Project and parcel records relating to appraisals and negotiations will be open to public inspection 9 months following the completion date of the project. Records relating to claims appealed to the Superior Court will be open to public inspection following the award of the Court.

Notwithstanding public availability of appraisals and negotiations records above, parcel records may contain information of a personal nature relating to claimant income, assets, tax information etc. This information may be protected from disclosure under privacy laws. Officials should consult the local agency or MaineDOT Chief Legal Counsel before making records available.

The municipality will retain records in accordance with the MaineDOT records retention policy as provided in the MaineDOT/Municipality Agreement.